

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

CIVIL SERVICE COMMISSION

One Ashburton Place: Room 503
Boston, MA 02108
(617) 727-2293

DOUGLAS HENNESSEY,
Appellant

v.

D-06-142

MBTA POLICE DEPARTMENT,
Respondent

Appellant's Attorney:

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Respondent's Attorney:

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Commissioner:

Donald R. Marquis

DECISION ON RESPONDENT'S MOTION TO DISMISS

Pursuant to the provisions of G.L. c. 31, § 43, the Appellant, Douglas Hennessey (hereafter "Hennessey" or Appellant") appealed the decision of the Respondent, the Massachusetts Bay Transportation Authority Transit Police Department (hereafter "Appointing Authority", or "MBTA"), to terminate him from his employment as a police officer because he was convicted of a felony. The Appellant filed a timely appeal with the Civil Service Commission.

A pre-hearing conference was conducted at the offices of the Civil Service Commission on September 28, 2006. Prior to the pre-hearing, the Appointing Authority filed a Motion to Dismiss on September 26, 2006 and the Appellant filed an Answer with the Commission on October 5, 2006.

The Appellant was hired by the MBTA as a police officer on November 30, 1998. He was found guilty in Suffolk Superior Court on May 23, 2006 of two crimes, G.L. c. 268, § 6A (Filing a False Written Report by a Public Employee) and G.L. c. 265, § 37 (Violation of Constitutional Rights Causing Bodily Injury). The manner in which the Appellant violated G.L. c. 265, § 37 is a felony. On May 31, 2006, the Appellant was sentenced to a total of six (6) years probation, one (1) year home confinement on an Electronic Bracelet Program, community service and required completion of an anger management program. As a condition of his probation, the court ordered that the Appellant is not allowed to work as a police or security officer for the entire six (6) years of probation. (See Suffolk Superior Court Case Summary SUCR2005-10769). Based on this felony conviction, the MBTA terminated the Appellant on June 15, 2006.

In support of its Motion to Dismiss, the MBTA cites G.L. c. 41, § 96A which states, “No person who has been convicted of any felony shall be appointed as a police officer of a city, town or district”. Further, the Court’s order prohibits the Appellant from being employed as a police officer.

In his answer, the Appellant argues that he has appealed his felony conviction, his appeal is presently pending; and that he should not be prejudiced by this jury conviction, which has not been fully reviewed by the Massachusetts Appeals Court. Secondly, the Appellant argues that the plain reading of G.L. c. 41, § 96A states that a police officer

may not be appointed as a police officer, but does not state that an incumbent police officer must be terminated if he is convicted of a felony.

Conclusion

It would defy logic and undermine law enforcement authority to interpret the statute to permit a person who becomes a felon while working as a police officer to continue working in that position.

The position of a police officer is one requiring an enormous amount of public trust. By the Appellant's felonious criminal act, he has violated that essential trust. Under the circumstances, the MBTA has little choice but to terminate Douglas Hennessey from his position as a police officer. Given the evidence before us, the Appointing Authority has shown, by a preponderance of the evidence, that it was reasonably justified in taking the action they did at the time.

For these reasons, the Appellant's appeal under Civil Service Commission Docket No. D-06-142 is hereby ***dismissed***.

Civil Service Commission

Donald R. Marquis, Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Guerin, Marquis and Taylor, Commissioners) on November 9, 2006.

A true record. Attest:

Commissioner

A motion for reconsideration may be filed by either Party within ten days of the receipt of a Commission order or decision. A motion for reconsideration shall be deemed a motion for rehearing in accordance with M.G.L. c. 30A § 14(1) for the purpose of tolling the time for appeal.

Any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under section 14 of chapter 30A in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the commission's order or decision.

Notice:

Douglas Louison

Patricia M. Lucek, Esq.